Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

quality,[10] it is considered as practically non-existent. The lessee is not obliged to extract every minute particle before he can claim that the ore has become exhausted. The court bases its decision in the principal case upon the foregoing rules, but extends them farther than previous cases have done, in holding that by "gravel" the parties meant "available gravel", and that the promisor was released when the "available gravel" became exhausted. The word "available" is virtually read into the actual agreement to cover a situation which probably never occurred to the parties, and to bring the facts within the operation of the rules on non-existence of subject matter.

The same conclusion is reached by the court through the syllogism, that what is unreasonably and excessively expensive is impracticable, and what is impracticable is, in legal intendment, impossible. We may conceive of situations where that proposition might be correct, but it cannot be laid down as a general rule. Performance which proves to be more than twice as costly as expected may well be considered unreasonably expensive, but promisors have been held bound by such promises,[11] and indeed in some instances where it was so thoroughly impracticable that the probable expense could not well be estimated with any accuracy.[12] Is the principle different when the expense can be fixed at ten times the normal? What the promisor actually does when he finds that the increased cost of performance will exceed the damages he will have to pay for failing to perform, is to choose the latter course. Beyond the point where damages and increased expense are equal, the size of such increase produces no added hardship upon the promisor, who pays the same damages whether the cost of performance be double or a hunderd times what he expected.

The court says, "Where the difference in cost, is so great as here, and has the effect of making performance impracticable, the situation is not different from that of a total absence of earth and gravel." This makes what seems to be an unnecessary exception to the general rule that unforeseen expense is no excuse.

*O. C. P.*

CORPORATIONS: IS A JUDGMENT AGAINST A DISSOLVED CORPORATION VOID?—The "conceded fact" that the dissolution of a corporation renders void any judgment pronounced against it after dissolution did not in *Llewellyn Iron Works v. Kinney*[1] lead to injustice being done to the plaintiff as it often has done. Mr.

---

Brick Co. v. Pond (1882), 38 Ohio St. 65.

[10] Bannan v. Graeff (1898), 186 Pa. St. 648, 40 Atl. 805.

[11] Janes v. Scott (1868), 59 Pa. St. 178, 98 Am. Dec. 328; Leavitt v. Dover (1892), 67 N. H. 94, 68 Am. St. Rep. 640, 32 Atl. 156; School Trustees of Trenton v. Bennett (1859), 3 Dutch. 513, 72 Am. Dec. 373.

[12] Beebe v. Johnson (1838), 19 Wend. 500, 32 Am. Dec. 518; Reid v. Alaska Packing Ass'n (1903), 43 Ore. 429, 73 Pac. 337.

[1] (Feb. 28, 1916), 51 Cal. Dec. 287, 155 Pac. 986.

Justice Henshaw's opinion is an admirable example of a court of equity looking beyond the corporate entity in its search for the real defendant who had disguised himself as a "one man corporation."

A doubt, however, may be expressed with reference to the "conceded fact," on which so many plaintiffs have been wrecked. Section 404 of the Civil Code apparently has not been referred to in any of the cases wherein it has been held that judgments against a dissolved corporation are void.[2] Yet it would seem that its bearing upon the question should at least have been discussed in some of the many cases which have established a principle, now a "conceded fact." That section declares that the "dissolution" of a corporation does not "take away or impair any remedy against any such corporation" for a previously incurred liability. This language certainly reads like a general saving clause in respect to all liabilities incurred before dissolution. The fact that it has not been cited or commented upon is little to be wondered at, for it was formerly found in an article of the Civil Code entitled "Examination of Corporations," and we have the word of the Code Commissioner that prior to 1905, "it was not in its proper place."[3] Whether its transportation from section 384 in the article on "Examination of Corporations" to section 404 in the article "General Provisions Affecting Corporations" has served to bring it to the light of day may be doubted.

*O. K. M.*

CRIMINAL LAW: NEW TRIAL: ERROR IN REPETITION OF PREJUDICIAL QUESTIONS.—So seldom now is a criminal case reversed by the California appellate courts that the mere granting of a new trial occasions surprise, a surprise which becomes a shock when the reversal is on grounds entirely insufficient. In *People of the State of California v. Terramorse*,[1] on a charge of grand larceny, the prosecuting attorney persisted in asking questions relating to defendant's expulsion from a lodge after the alleged larceny had been committed. In argument the prosecuting attorney also commented on defendant's refusal to allow defendant's wife to take the stand. In both instances the prosecuting officer erred. For these errors the case is reversed without the slightest consideration, in the opinion at any rate, as to whether the evidence disclosed that the defendant was really guilty, or that the errors complained of had resulted in a miscarriage of justice under Art. VI, §4½ of the Constitution of California. In the opinion of the

---

[2] Crossman v. Vivienda Water Company (1907), 150 Cal. 575, 89 Pac. 335; Kaiser Land and Fruit Co. v. Curry (1909), 155 Cal. 638, 103 Pac. 341; Newhall v. Western Zinc Min. Co. (1912), 164 Cal. 380, 128 Pac. 1040.

[3] Commissioner's Note to Cal. Civ. Code, § 384.

[1] (April 13, 1916), 22 Cal. App. Dec. 699.